



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-18-571572

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COMPLAINT

**CITY AND COUNTY OF SAN FRANCISCO ET AL VS. FIDELIS CYBERSECURITY,
INC. ET AL**

001C06586448

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: FIDELIS CYBERSECURITY, INC.; MAAREK (AVISO AL DEMANDADO): ZALATIMO (aka MARK ZALATIMO); HEATHER ZALATIMO; JEFF JORGENSON; AND DOES ONE through TEN

YOU ARE BEING SUED BY PLAINTIFF: CITY AND COUNTY OF SAN (LO ESTÁ DEMANDANDO EL DEMANDANTE): FRANCISCO, a Charter City and County; and the PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J. Herrera, City Attorney for the City and County of San Francisco

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister Street

San Francisco, California 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Dennis J. Herrera, City Attorney, SBN 139669; Kesslie Stewart, Head Attorney for Public Integrity, SBN 184090

1390 Market Street, Fox Plaza, 7th Floor, San Francisco, CA 94102

DATE:

(Fecha) **NOV 27 2018**

Clerk, by

(Secretary)

CLERK OF THE COURT

CASE NUMBER
(Número de caso)

CGC-18-571572

(415) 554-3980

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

DENNIS J. HERRERA, State Bar #139669
City Attorney
KESLIE STEWART, State Bar #184090
Head Attorney for Public Integrity
Fox Plaza
1390 Market Street, Seventh Floor
San Francisco, California 94102-5408
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E-Mail: kesslie.stewart@sfcityatty.org

FILED
San Francisco County Superior Court

NOV 27 2018

CLERK OF THE COURT
BY: *Chelene Johnson*
Deputy Clerk

Attorneys for Plaintiffs
CITY AND COUNTY OF SAN FRANCISCO
and THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

CITY AND COUNTY OF SAN
FRANCISCO, a Charter City and County; and
the PEOPLE OF THE STATE OF
CALIFORNIA, by and through Dennis J.
Herrera, City Attorney for the City and County
of San Francisco,

Plaintiffs,

vs.

FIDELIS CYBERSECURITY, INC.;
MAAREK ZALATIMO (aka MARK
ZALATIMO); HEATHER ZALATIMO; JEFF
JORGENSEN; AND DOES ONE through
TEN,

Defendants.

Case No. **CGC-18-571572**

COMPLAINT FOR DISGORGEMENT,
PENALTIES, AND OTHER RELIEF

(1) Conflict of Interest (Gov. Code §§ 1090 *et seq.*);
(2) Political Reform Act (Gov. Code §§ 87100 *et seq.*);
(3) Conflict of Interest (San Francisco Campaign
and Gov. Conduct Code §§ 3.206 and 3.236); and
(4) Unfair Competition (Bus. & Prof. Code §§
17200 *et seq.*)

– JURY TRIAL DEMANDED –

Plaintiffs, the CITY AND COUNTY OF SAN FRANCISCO ("CITY") and the PEOPLE OF
THE STATE OF CALIFORNIA (the "PEOPLE"), acting by and through San Francisco City Attorney
Dennis J. Herrera, bring this action against Defendants FIDELIS CYBERSECURITY, INC.;
MAAREK ZALATIMO (aka MARK ZALATIMO); HEATHER ZALATIMO; and JEFF
JORGENSEN (collectively, "DEFENDANTS").

1 Dennis J. Herrera, elected City Attorney for the City and County of San Francisco ("CITY
2 ATTORNEY") brings this action as the civil prosecutor for violations of the Political Reform Act
3 under Governmental Code Section 91001.5, and for violations of San Francisco's Campaign and
4 Governmental Conduct Code pursuant to Campaign and Governmental Conduct Code Section
5 3.242(b).

6 **PARTIES**

7 1. Plaintiff CITY AND COUNTY OF SAN FRANCISCO was and is a charter city and
8 county, organized and existing under and by virtue of the laws of the State of California. Plaintiff
9 CITY includes the "people of San Francisco" as provided for in San Francisco Campaign and
10 Governmental Conduct Code Section 3.242, as well as the San Francisco Department of Public Health
11 ("SFDPH").

12 2. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J.
13 Herrera, City Attorney for the City and County of San Francisco, brings this action pursuant to
14 California Business and Professions Code Sections 17200-17210. This Complaint will refer to CITY
15 and PEOPLE OF THE STATE OF CALIFORNIA collectively as "PLAINTIFFS."

16 3. At all times relevant to the allegations in this Complaint, Defendant Fidelis
17 Cybersecurity, Inc. ("FIDELIS") was a Delaware corporation headquartered in Bethesda, Maryland,
18 that did business nationally and internationally, including in San Francisco.

19 4. At all times relevant to the allegations in this Complaint, Defendant Maarek Zalatimo
20 ("MAAREK ZALATIMO") was an individual and a resident of the State of California. MAAREK
21 ZALATIMO was also known as Mark Zalatimo. MAAREK ZALATIMO was employed by FIDELIS
22 as Regional Sales Manager for Northern California where he received a base salary plus commissions
23 based on sales. MAAREK ZALATIMO was married to defendant Heather Zalatimo ("HEATHER
24 ZALATIMO") until at least September 20, 2016.

25 5. At all times relevant to the allegations in this Complaint, Defendant HEATHER
26 ZALATIMO was an individual and a resident of the State of California. HEATHER ZALATIMO was
27 employed by SFDPH as an information technology ("IT") systems engineer. HEATHER ZALATIMO
28 was married to MAAREK ZALATIMO until at least September 20, 2016.

1 6. At all times relevant to the allegations in this Complaint, Defendant Jeff Jorgenson
2 (“JORGENSEN”) was an individual and a resident of the State of California. JORGENSEN was
3 employed by SFDPH as IT Chief Operating Officer and supervised Defendant HEATHER
4 ZALATIMO.

5 7. The true names and capacities of Defendants sued herein under the fictitious names
6 DOES ONE through TEN, inclusive, are unknown to PLAINTIFFS. PLAINTIFFS will seek leave of
7 court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

8 **SUMMARY OF ALLEGATIONS**

9 8. This lawsuit seeks disgorgement, civil penalties, and other relief from FIDELIS, from
10 former FIDELIS employee MAAREK ZALATIMO, and from former SFDPH employees HEATHER
11 ZALATIMO and JORGENSEN (collectively “DEFENDANTS”). DEFENDANTS knowingly
12 participated in and aided and abetted the CITY’s purchase for SFDPH of more than \$1 million of
13 FIDELIS software and services despite a known conflict of interest resulting from HEATHER
14 ZALATIMO’s marriage to MAAREK ZALATIMO, a paid employee of FIDELIS at the time of the
15 purchase.

16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction because PLAINTIFFS’ causes of action are pleaded under
18 California law, DEFENDANTS reside and/or do business within California, and the amount in
19 controversy exceeds \$25,000.

20 10. Venue is proper in the Superior Court (Unlimited Jurisdiction) of the County of San
21 Francisco, because DEFENDANTS committed a majority of their unlawful conduct within the City
22 and County of San Francisco.

23 **GENERAL ALLEGATIONS**

24 11. Beginning at least in December 2015, MAAREK ZALATIMO and other FIDELIS
25 employees began communicating with HEATHER ZALATIMO in her official capacity as an SFDPH
26 employee about FIDELIS products such as FIDELIS XPS, a product designed to protect against
27 intrusions to a computer network that can compromise the security of electronic data.

28 12. In January 2016, MAAREK ZALATIMO and other FIDELIS employees continued to

1 communicate with HEATHER ZALATIMO regarding FIDELIS products with an eye toward selling
2 FIDELIS products to SFDPH. MAAREK ZALATIMO invited HEATHER ZALATIMO to "Fidelis
3 Overview/Demo" on or about January 7, 2016. At MAAREK ZALATIMO's direction and with his
4 knowledge, FIDELIS employees provided HEATHER ZALATIMO with information about FIDELIS
5 products.

6 13. On or about January 8, 2016, HEATHER ZALATIMO sought feedback from SFDPH
7 employees within the IT group regarding the FIDELIS presentation and product pitch. In March 2016,
8 HEATHER ZALATIMO and MAAREK ZALATIMO jointly received information by email from a
9 FIDELIS employee regarding a test, called a proof of concept, of FIDELIS products by SFDPH.

10 14. Throughout March and April 2016, HEATHER ZALATIMO coordinated a proof of
11 concept of the FIDELIS products by SFDPH. On or about March 17, 2016, FIDELIS employees, with
12 MAAREK ZALATIMO's knowledge, forwarded HEATHER ZALATIMO a "Fidelis
13 Network/Endpoint PoC Technical Project Plan for San Francisco Department of Public Health." That
14 plan listed "Mark Zalatimo" as the "Territory Manager" for FIDELIS.

15 15. On or about April 29, 2016, HEATHER ZALATIMO provided a document titled
16 "Security Plan: Identifying Gaps and Recommendations to Fill Them" to JORGENSEN and others at
17 SFDPH recommending FIDELIS products to address perceived security gaps at SFDPH.

18 16. On or about May 2, 2016, MAAREK ZALATIMO emailed HEATHER ZALATIMO a
19 \$1,363,500 quote for the purchase of specified FIDELIS products and services.

20 17. In July 2016, HEATHER ZALATIMO obtained a quote for the purchase of those
21 FIDELIS products and services through MoreDirect, Inc. ("MoreDirect"), a reseller of, among other
22 things, software and IT services.

23 18. On or about August 10, 2016, JORGENSEN signed and approved the purchase of
24 \$1,245,919.35 of FIDELIS products and services through MoreDirect, Inc. The purchase order
25 included billing and shipping information to San Francisco General Hospital and was directed to
26 "Attention: Heather Zalatimo."

27 19. On or about August 22, 2016, MAAREK ZALATIMO emailed HEATHER
28 ZALATIMO and asked for the correct SFDPH shipping address for the FIDELIS products.

20. Based on that August 10, 2016, purchase order, MoreDirect sent SFDPH an invoice dated September 14, 2016. Sometime in October 2016, the CITY released \$1,245,919 to pay for the FIDELIS products and services.

FIRST CAUSE OF ACTION

For Violation of Conflict of Interest Laws, Government Code § 1090 Brought by the CITY Against All Named DEFENDANTS and Does 1-10

21. PLAINTIFF CITY re-alleges and incorporates by reference each and every paragraph set forth above.

22. California Government Code Section 1090 prohibits a public official from participating in making any contract or purchase order in which that official has a financial interest.

23. Under California Government Code Section 1092, contracts and purchase orders and the approval of payment thereon made in violation of Government Code Section 1090 may be avoided at the request of any party other than the financially interested official. Among other remedies, all of the payments made by a public entity pursuant to a contract tainted by a conflict must be refunded to the public entity.

24. Defendant HEATHER ZALATIMO had a financial interest in the CITY's \$1.245 million purchase of FIDELIS products and services, because she was married to MAAREK ZALATIMO, an employee of FIDELIS, and had a financial interest in her spouse's salary and commissions.

25. Acting in her official capacity as an SFDPH employee, Defendant HEATHER ZALATIMO participated in the making of the CITY's contract to purchase \$1.245 million of FIDELIS products and services by, among other things: (1) identifying FIDELIS products for purchase by the CITY; (2) testing FIDELIS products for use by SFDPH; (3) recommending FIDELIS products and services to her supervisors at SFDPH; and (4) contacting MoreDirect to arrange for the procurement of FIDELIS products and services.

26. Defendant JORGENSEN knew that HEATHER ZALATIMO had a financial interest in the CITY's purchase of FIDELIS products and services, because he knew that HEATHER ZALATIMO's husband worked at FIDELIS. Defendant JORGENSEN further knew that HEATHER

1 ZALATIMO participated in the purchase of FIDELIS products and services, because he knew that
2 HEATHER ZALATIMO, among other things: (1) identified FIDELIS products for purchase by the
3 CITY; (2) tested FIDELIS products for use by SFDPH; (3) recommended FIDELIS products to him
4 and others in an April 2016 Power Point presentation; and (4) arranged for the procurement of
5 FIDELIS products through MoreDirect. JORGENSEN knowingly and intentionally aided and abetted
6 HEATHER ZALATIMO's violation of Government Code Section 1090 by signing the August 10,
7 2016, purchase order, knowing of HEATHER ZALATIMO's involvement in the purchase and of her
8 marriage to a FIDELIS employee.

9 27. Defendant MAAREK ZALATIMO similarly knew that HEATHER ZALATIMO had a
10 financial interest in the CITY's purchase of FIDELIS products and services, because he knew that he
11 was employed by FIDELIS and that HEATHER ZALATIMO was his spouse. MAAREK
12 ZALATIMO also knew that HEATHER ZALATIMO was involved in the purchase of FIDELIS
13 products and services, because he communicated directly with her about it. MAAREK ZALATIMO
14 knowingly and intentionally aided and abetted HEATHER ZALATIMO's violation of Government
15 Code Section 1090 by communicating with her in furtherance of the CITY's purchase of FIDELIS
16 products and services.

17 28. Because of HEATHER ZALATIMO's financial interest in and participation in the
18 CITY's purchase of FIDELIS products and services for SFDPH, the \$1.245 million purchase order
19 signed by JORGENSEN on August 10, 2016, was void when executed.

20 29. Defendants FIDELIS, JORGENSEN and MAAREK ZALATIMO aided and abetted
21 HEATHER ZALATIMO in violating California Government Code Section 1090 in that they each
22 facilitated the \$1.245 million purchase of FIDELIS products and services by the CITY knowing or
23 having reason to know that HEATHER ZALATIMO had a financial interest in that purchase as a
24 result of her marriage to FIDELIS employee MAAREK ZALATIMO and intending to assist her in
25 making that purchase.

26 30. Plaintiff CITY therefore prays for judgment against DEFENDANTS as set forth below
27 in the Prayer for Relief.

28 ///

SECOND CAUSE OF ACTION

**For Violation of the Political Reform Act, Government Code
Sections 91001.5 and 87100 *et seq.***

Brought by the CITY

Against Defendant HEATHER ZALATIMO and Does 1-10

31. Plaintiff CITY re-alleges and incorporates by reference each and every paragraph set forth above.

32. Government Code Section 91001.5 authorizes the CITY ATTORNEY to act as civil prosecutor with respect to any violation of the Political Reform Act, Government Code Sections 87100 *et seq.*, because the CITY ATTORNEY is the elected city attorney of SAN FRANCISCO, a charter city.

33. Defendant HEATHER ZALATIMO violated the Political Reform Act, Government Code Section 87100, by making, participating in making, and attempting to use her official position to influence the governmental decision by SFDPH to purchase FIDELIS products and services. Each of HEATHER ZALATIMO's actions to participate in making or influencing the governmental decision by SFDPH to purchase FIDELIS products and services constitutes a separate violation of the Political Reform Act. These actions include but are not limited to her: (1) identifying FIDELIS products for purchase by the CITY; (2) testing FIDELIS products for use by SFDPH; (3) recommending FIDELIS products and services to her supervisors at SFDPH; and (4) contacting MoreDirect to arrange for procurement of FIDELIS products and services.

34. HEATHER ZALATIMO knew or had reason to know that she had a financial interest in the purchase of FIDELIS products and services, because she knew that her spouse, MAAREK ZALATIMO, was employed at FIDELIS.

35. Accordingly, the CITY prays for judgment against Defendant HEATHER ZALATIMO as set forth below in the Prayer for Relief.

THIRD CAUSE OF ACTION

**For Violation of the San Francisco Campaign and Governmental Conduct Code
Sections 3.200 *et seq.* Brought by the CITY**

Against All Named DEFENDANTS and Does 1-10

36. Plaintiff CITY re-alleges and incorporates by reference each and every paragraph set

forth above.

37. San Francisco Campaign and Governmental Conduct Code Section 3.242 authorizes the CITY ATTORNEY to act as civil prosecutor with respect to violations of any San Francisco conflict of interest and/or governmental ethics law and to bring actions “on behalf of the people of San Francisco.” San Francisco Campaign and Governmental Conduct Code Section 3.242(b)-(c).

38. Section 3.206 of the Campaign and Governmental Conduct Code explicitly incorporates both the Political Reform Act, Government Code Sections 87100 *et seq.*, and Sections 1090 *et seq.*

39. Because DEFENDANTS' conduct, as described in this Complaint, violated the Political Reform Act and/or Government Code Section 1090, it also violated the San Francisco Campaign and Governmental Conduct Code Section 3.206.

40. By engaging in the conduct described in this Complaint, Defendant HEATHER ZALATIMO negligently or intentionally violated San Francisco conflict of interest and/or governmental ethics laws.

41. By engaging in the conduct described in this Complaint, Defendants FIDELIS, MAAREK ZALATIMO, and JORGENSEN also knowingly and intentionally assisted in, or aided and abetted, HEATHER ZALATIMO's violations, in violation of Section 3.236 of the San Francisco Campaign and Governmental Conduct Code.

42. Accordingly, the CITY prays for judgment against DEFENDANTS as set forth below in the Prayer for Relief.

FOURTH CAUSE OF ACTION

**For Violations of Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.*
Brought by the PEOPLE OF THE STATE OF CALIFORNIA
Against Defendants MAAREK ZALATIMO, FIDELIS, and Does 1-10**

43. Plaintiff PEOPLE re-alleges and incorporates by reference each and every paragraph set forth above.

44. Plaintiff PEOPLE, acting to protect the public as consumers and competitors from unlawful, unfair, and fraudulent practices, brings this cause of action in the public interest in the name of the People of the State of California, pursuant to Business and Professions Code Sections 17200-

1 17209. Section 17200 of the Business and Professions Code provides that unfair competition shall
2 mean and include any "unlawful, unfair, or fraudulent business act or practice."

3 45. By engaging in the conduct described in this Complaint, Defendants MAAREK
4 ZALATIMO and FIDELIS engaged in unfair competition within the meaning of the Unfair
5 Competition Law, Business and Professions Code Section 17200. Each of the acts alleged in this
6 Complaint constitutes an unlawful, unfair, or fraudulent business act or practice under Section 17200.
7 Defendants' MAAREK ZALATIMO and FIDELIS' acts caused damage to the CITY. The predicate
8 unlawful business acts or practices include, without limitation, violations of California and San
9 Francisco conflict of interest laws and/or governmental ethics laws. These wrongful acts include, but
10 are not limited to:

- 11 (a) MAAREK ZALATIMO's assistance to HEATHER ZALATIMO in the CITY's
12 purchase of FIDELIS products and services for SFDPH, in violation of
13 Government Code Section 1090 and San Francisco Campaign and
14 Governmental Conduct Code Section 3.236;
15 (b) FIDELIS' receipt of monies from the CITY that were obtained through
16 violations of San Francisco Campaign and Governmental Conduct Code Section
17 3.236 and Government Code Section 1090; and
18 (c) FIDELIS' aiding and abetting violations of San Francisco Campaign and
19 Governmental Conduct Code Section 3.206 and Government Code Section
20 1090.

21 46. Plaintiff PEOPLE therefore prays for judgment against Defendants MAAREK
22 ZALATIMO and FIDELIS as set forth below in the Prayer for Relief.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, the PLAINTIFFS pray for judgment against DEFENDANTS as follows:

- 25 (1) For disgorgement by DEFENDANTS of all of the CITY's payments toward the \$1.245
26 million purchase of FIDELIS products and services, with pre and post-judgment interest.
27 (2) For the costs of this action, including litigation costs, costs of investigation, and court
28 costs;

1 (3) For declaratory and injunctive relief under Government Code Section 91003(b) setting
2 aside, as void from the beginning, the \$1.245 million purchase order for the purchase of FIDELIS
3 products and services;

4 (4) For civil penalties against HEATHER ZALATIMO under Government Code Section
5 91005(b) for an amount three times the value of the economic benefit that she realized as a result of
6 her violation of Government Code Sections 87100 *et seq.* according to proof at trial;

7 (5) For civil penalties against HEATHER ZALATIMO under Government Code Section
8 91005.5 for five thousand dollars (\$5,000) per violation of Government Code Section 87100 *et seq.*;

9 (6) For civil penalties against DEFENDANTS and each of them under San Francisco
10 Campaign and Governmental Conduct Code Section 3.242(b) for five thousand dollars (\$5,000) per
11 violation of City conflict of interest and/or governmental ethics laws;

12 (7) For civil penalties against Defendants MAAREK ZALATIMO and FIDELIS under
13 Business and Professions Code Section 17206, not to exceed two thousand, five hundred dollars
14 (\$2,500) for each violation of Section 17200. Under Business and Professions Code Section 17205,
15 these penalties shall be cumulative to any other penalties or other remedy;

16 (8) For an order under Business and Professions Code Section 17203 enjoining Defendants
17 from performing or proposing to perform any of the aforementioned acts of unfair competition within
18 the City and County of San Francisco; and

19 (9) For such other and further relief as the Court may deem proper.

20 **JURY DEMAND**

21 PLAINTIFFS demand a jury trial.

22 Dated: November 27, 2018

23 DENNIS J. HERRERA
24 City Attorney
25 KESLIE STEWART
Head Attorney for Public Integrity

26 By: 

27 KESLIE STEWART
Attorneys for Plaintiffs

28 CITY AND COUNTY OF SAN FRANCISCO and THE
PEOPLE OF THE STATE OF CALIFORNIA

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DENNIS J. HERRERA, City Attorney, Bar #139669 KESLIE STEWART, State Bar #184090 1390 Market Street, Seventh Floor San Francisco, CA 94102-5408 TELEPHONE NO: 415-554-3980 FAX NO: 415-554-9711 ATTORNEY FOR (Name): Plaintiffs CCSF, et al.	FOR COURT USE ONLY <h1 style="margin: 0;">FILED</h1> <i>San Francisco County Superior Court</i> NOV 27 2018 CLERK OF THE COURT BY:  Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:	
CASE NAME: CCSF, et al., v. FIDELIS CYBERSECURITY, INC., et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
CASE NUMBER: CGC-18-571572 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|--|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input checked="" type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 4
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 27, 2018

Keslie Stewart

(TYPE OR PRINT NAME)

Keslie Stewart

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Nov-27-2018 10:33 am

Case Number: CGC-18-571572

Filing Date: Nov-27-2018 10:29

Filed by: KALENE APOLONIO

Image: 06586448

COMPLAINT

**CITY AND COUNTY OF SAN FRANCISCO ET AL VS. FIDELIS CYBERSECURITY,
INC. ET AL**

001C06586448

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT: FIDELIS CYBERSECURITY, INC.; MAAREK
(AVISO AL DEMANDADO): ZALATIMO (aka MARK ZALATIMO); HEATHER
ZALATIMO; JEFF JORGENSON; AND DOES ONE through TEN**

**YOU ARE BEING SUED BY PLAINTIFF: CITY AND COUNTY OF SAN
(LO ESTÁ DEMANDANDO EL DEMANDANTE): FRANCISCO, a Charter City
and County; and the PEOPLE OF THE STATE OF CALIFORNIA, by and through
Dennis J. Herrera, City Attorney for the City and County of San Francisco**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, California 94102

CASE NUMBER
(Número de caso) **CGC-18-571572**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Dennis J. Herrera, City Attorney, SBN 139669; Keslie Stewart, Head Attorney for Public Integrity, SBN 184090
1390 Market Street, Fox Plaza, 7th Floor, San Francisco, CA 94102

DATE:
(Fecha) **NOV 27 2018**

Clerk, by

(Secretary)

CLERK OF THE COURT

(415) 554-3980

KALENE APOLLINIA, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

DENNIS J. HERRERA, State Bar #139669
City Attorney
KESLIE STEWART, State Bar #184090
Head Attorney for Public Integrity
Fox Plaza
1390 Market Street, Seventh Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3980
Facsimile: (415) 554-9711
E-Mail: kesslie.stewart@sfcityatty.org

Attorneys for Plaintiffs
CITY AND COUNTY OF SAN FRANCISCO
and THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

CITY AND COUNTY OF SAN
FRANCISCO, a Charter City and County; and
the PEOPLE OF THE STATE OF
CALIFORNIA, by and through Dennis J.
Herrera, City Attorney for the City and County
of San Francisco,

Plaintiffs,

vs.

FIDELIS CYBERSECURITY, INC.;
MAAREK ZALATIMO (aka MARK
ZALATIMO); HEATHER ZALATIMO; JEFF
JORGENSEN; AND DOES ONE through
TEN,

Defendants.

Case No. **CGC-18-571572**

COMPLAINT FOR DISGORGEMENT,
PENALTIES, AND OTHER RELIEF

- (1) Conflict of Interest (Gov. Code §§ 1090 *et seq.*);
- (2) Political Reform Act (Gov. Code §§ 87100 *et seq.*);
- (3) Conflict of Interest (San Francisco Campaign and Gov. Conduct Code §§ 3.206 and 3.236); and
- (4) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*)

- JURY TRIAL DEMANDED -

Plaintiffs, the CITY AND COUNTY OF SAN FRANCISCO ("CITY") and the PEOPLE OF
THE STATE OF CALIFORNIA (the "PEOPLE"), acting by and through San Francisco City Attorney
Dennis J. Herrera, bring this action against Defendants FIDELIS CYBERSECURITY, INC.;
MAAREK ZALATIMO (aka MARK ZALATIMO); HEATHER ZALATIMO; and JEFF
JORGENSEN (collectively, "DEFENDANTS").

FILED

San Francisco County Superior Court

NOV 27 2018

CLERK OF THE COURT

BY: *Galene John*
Deputy Clerk

1 Dennis J. Herrera, elected City Attorney for the City and County of San Francisco ("CITY
2 ATTORNEY") brings this action as the civil prosecutor for violations of the Political Reform Act
3 under Governmental Code Section 91001.5, and for violations of San Francisco's Campaign and
4 Governmental Conduct Code pursuant to Campaign and Governmental Conduct Code Section
5 3.242(b).

6 **PARTIES**

7 1. Plaintiff CITY AND COUNTY OF SAN FRANCISCO was and is a charter city and
8 county, organized and existing under and by virtue of the laws of the State of California. Plaintiff
9 CITY includes the "people of San Francisco" as provided for in San Francisco Campaign and
10 Governmental Conduct Code Section 3.242, as well as the San Francisco Department of Public Health
11 ("SFPDH").

12 2. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J.
13 Herrera, City Attorney for the City and County of San Francisco, brings this action pursuant to
14 California Business and Professions Code Sections 17200-17210. This Complaint will refer to CITY
15 and PEOPLE OF THE STATE OF CALIFORNIA collectively as "PLAINTIFFS."

16 3. At all times relevant to the allegations in this Complaint, Defendant Fidelis
17 Cybersecurity, Inc. ("FIDELIS") was a Delaware corporation headquartered in Bethesda, Maryland,
18 that did business nationally and internationally, including in San Francisco.

19 4. At all times relevant to the allegations in this Complaint, Defendant Maarek Zalatimo
20 ("MAAREK ZALATIMO") was an individual and a resident of the State of California. MAAREK
21 ZALATIMO was also known as Mark Zalatimo. MAAREK ZALATIMO was employed by FIDELIS
22 as Regional Sales Manager for Northern California where he received a base salary plus commissions
23 based on sales. MAAREK ZALATIMO was married to defendant Heather Zalatimo ("HEATHER
24 ZALATIMO") until at least September 20, 2016.

25 5. At all times relevant to the allegations in this Complaint, Defendant HEATHER
26 ZALATIMO was an individual and a resident of the State of California. HEATHER ZALATIMO was
27 employed by SFPDH as an information technology ("IT") systems engineer. HEATHER ZALATIMO
28 was married to MAAREK ZALATIMO until at least September 20, 2016.

1 6. At all times relevant to the allegations in this Complaint, Defendant Jeff Jorgenson
2 ("JORGENSEN") was an individual and a resident of the State of California. JORGENSEN was
3 employed by SFDPH as IT Chief Operating Officer and supervised Defendant HEATHER
4 ZALATIMO.

5 7. The true names and capacities of Defendants sued herein under the fictitious names
6 DOES ONE through TEN, inclusive, are unknown to PLAINTIFFS. PLAINTIFFS will seek leave of
7 court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

8 **SUMMARY OF ALLEGATIONS**

9 8. This lawsuit seeks disgorgement, civil penalties, and other relief from FIDELIS, from
10 former FIDELIS employee MAAREK ZALATIMO, and from former SFDPH employees HEATHER
11 ZALATIMO and JORGENSEN (collectively "DEFENDANTS"). DEFENDANTS knowingly
12 participated in and aided and abetted the CITY's purchase for SFDPH of more than \$1 million of
13 FIDELIS software and services despite a known conflict of interest resulting from HEATHER
14 ZALATIMO's marriage to MAAREK ZALATIMO, a paid employee of FIDELIS at the time of the
15 purchase.

16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction because PLAINTIFFS' causes of action are pleaded under
18 California law, DEFENDANTS reside and/or do business within California, and the amount in
19 controversy exceeds \$25,000.

20 10. Venue is proper in the Superior Court (Unlimited Jurisdiction) of the County of San
21 Francisco, because DEFENDANTS committed a majority of their unlawful conduct within the City
22 and County of San Francisco.

23 **GENERAL ALLEGATIONS**

24 11. Beginning at least in December 2015, MAAREK ZALATIMO and other FIDELIS
25 employees began communicating with HEATHER ZALATIMO in her official capacity as an SFDPH
26 employee about FIDELIS products such as FIDELIS XPS, a product designed to protect against
27 intrusions to a computer network that can compromise the security of electronic data.

28 12. In January 2016, MAAREK ZALATIMO and other FIDELIS employees continued to

1 communicate with HEATHER ZALATIMO regarding FIDELIS products with an eye toward selling
2 FIDELIS products to SFDPH. MAAREK ZALATIMO invited HEATHER ZALATIMO to "Fidelis
3 Overview/Demo" on or about January 7, 2016. At MAAREK ZALATIMO's direction and with his
4 knowledge, FIDELIS employees provided HEATHER ZALATIMO with information about FIDELIS
5 products.

6 13. On or about January 8, 2016, HEATHER ZALATIMO sought feedback from SFDPH
7 employees within the IT group regarding the FIDELIS presentation and product pitch. In March 2016,
8 HEATHER ZALATIMO and MAAREK ZALATIMO jointly received information by email from a
9 FIDELIS employee regarding a test, called a proof of concept, of FIDELIS products by SFDPH.

10 14. Throughout March and April 2016, HEATHER ZALATIMO coordinated a proof of
11 concept of the FIDELIS products by SFDPH. On or about March 17, 2016, FIDELIS employees, with
12 MAAREK ZALATIMO's knowledge, forwarded HEATHER ZALATIMO a "Fidelis
13 Network/Endpoint PoC Technical Project Plan for San Francisco Department of Public Health." That
14 plan listed "Mark Zalatico" as the "Territory Manager" for FIDELIS.

15 15. On or about April 29, 2016, HEATHER ZALATIMO provided a document titled
16 "Security Plan: Identifying Gaps and Recommendations to Fill Them" to JORGENSEN and others at
17 SFDPH recommending FIDELIS products to address perceived security gaps at SFDPH.

18 16. On or about May 2, 2016, MAAREK ZALATIMO emailed HEATHER ZALATIMO a
19 \$1,363,500 quote for the purchase of specified FIDELIS products and services.

20 17. In July 2016, HEATHER ZALATIMO obtained a quote for the purchase of those
21 FIDELIS products and services through MoreDirect, Inc. ("MoreDirect"), a reseller of, among other
22 things, software and IT services.

23 18. On or about August 10, 2016, JORGENSEN signed and approved the purchase of
24 \$1,245,919.35 of FIDELIS products and services through MoreDirect, Inc. The purchase order
25 included billing and shipping information to San Francisco General Hospital and was directed to
26 "Attention: Heather Zalatico."

27 19. On or about August 22, 2016, MAAREK ZALATIMO emailed HEATHER
28 ZALATIMO and asked for the correct SFDPH shipping address for the FIDELIS products.

20. Based on that August 10, 2016, purchase order, MoreDirect sent SFDPH an invoice dated September 14, 2016. Sometime in October 2016, the CITY released \$1,245,919 to pay for the FIDELIS products and services.

FIRST CAUSE OF ACTION

**For Violation of Conflict of Interest Laws, Government Code § 1090
Brought by the CITY Against All Named DEFENDANTS and Does 1-10**

21. PLAINTIFF CITY re-alleges and incorporates by reference each and every paragraph set forth above.

22. California Government Code Section 1090 prohibits a public official from participating in making any contract or purchase order in which that official has a financial interest.

23. Under California Government Code Section 1092, contracts and purchase orders and the approval of payment thereon made in violation of Government Code Section 1090 may be avoided at the request of any party other than the financially interested official. Among other remedies, all of the payments made by a public entity pursuant to a contract tainted by a conflict must be refunded to the public entity.

24. Defendant HEATHER ZALATIMO had a financial interest in the CITY's \$1.245 million purchase of FIDELIS products and services, because she was married to MAAREK ZALATIMO, an employee of FIDELIS, and had a financial interest in her spouse's salary and commissions.

25. Acting in her official capacity as an SFDPH employee, Defendant HEATHER ZALATIMO participated in the making of the CITY's contract to purchase \$1.245 million of FIDELIS products and services by, among other things: (1) identifying FIDELIS products for purchase by the CITY; (2) testing FIDELIS products for use by SFDPH; (3) recommending FIDELIS products and services to her supervisors at SFDPH; and (4) contacting MoreDirect to arrange for the procurement of FIDELIS products and services.

26. Defendant JORGENSEN knew that HEATHER ZALATIMO had a financial interest in the CITY's purchase of FIDELIS products and services, because he knew that HEATHER ZALATIMO's husband worked at FIDELIS. Defendant JORGENSEN further knew that HEATHER

1 ZALATIMO participated in the purchase of FIDELIS products and services, because he knew that
2 HEATHER ZALATIMO, among other things: (1) identified FIDELIS products for purchase by the
3 CITY; (2) tested FIDELIS products for use by SFDPH; (3) recommended FIDELIS products to him
4 and others in an April 2016 Power Point presentation; and (4) arranged for the procurement of
5 FIDELIS products through MoreDirect. JORGENSEN knowingly and intentionally aided and abetted
6 HEATHER ZALATIMO's violation of Government Code Section 1090 by signing the August 10,
7 2016, purchase order, knowing of HEATHER ZALATIMO's involvement in the purchase and of her
8 marriage to a FIDELIS employee.

9 27. Defendant MAAREK ZALATIMO similarly knew that HEATHER ZALATIMO had a
10 financial interest in the CITY's purchase of FIDELIS products and services, because he knew that he
11 was employed by FIDELIS and that HEATHER ZALATIMO was his spouse. MAAREK
12 ZALATIMO also knew that HEATHER ZALATIMO was involved in the purchase of FIDELIS
13 products and services, because he communicated directly with her about it. MAAREK ZALATIMO
14 knowingly and intentionally aided and abetted HEATHER ZALATIMO's violation of Government
15 Code Section 1090 by communicating with her in furtherance of the CITY's purchase of FIDELIS
16 products and services.

17 28. Because of HEATHER ZALATIMO's financial interest in and participation in the
18 CITY's purchase of FIDELIS products and services for SFDPH, the \$1.245 million purchase order
19 signed by JORGENSEN on August 10, 2016, was void when executed.

20 29. Defendants FIDELIS, JORGENSEN and MAAREK ZALATIMO aided and abetted
21 HEATHER ZALATIMO in violating California Government Code Section 1090 in that they each
22 facilitated the \$1.245 million purchase of FIDELIS products and services by the CITY knowing or
23 having reason to know that HEATHER ZALATIMO had a financial interest in that purchase as a
24 result of her marriage to FIDELIS employee MAAREK ZALATIMO and intending to assist her in
25 making that purchase.

26 30. Plaintiff CITY therefore prays for judgment against DEFENDANTS as set forth below
27 in the Prayer for Relief.

28 ///

SECOND CAUSE OF ACTION

**For Violation of the Political Reform Act, Government Code
Sections 91001.5 and 87100 *et seq.***

Brought by the CITY

Against Defendant HEATHER ZALATIMO and Does 1-10

31. Plaintiff CITY re-alleges and incorporates by reference each and every paragraph set forth above.

32. Government Code Section 91001.5 authorizes the CITY ATTORNEY to act as civil prosecutor with respect to any violation of the Political Reform Act, Government Code Sections 87100 *et seq.*, because the CITY ATTORNEY is the elected city attorney of SAN FRANCISCO, a charter city.

33. Defendant HEATHER ZALATIMO violated the Political Reform Act, Government Code Section 87100, by making, participating in making, and attempting to use her official position to influence the governmental decision by SFDPH to purchase FIDELIS products and services. Each of HEATHER ZALATIMO's actions to participate in making or influencing the governmental decision by SFDPH to purchase FIDELIS products and services constitutes a separate violation of the Political Reform Act. These actions include but are not limited to her: (1) identifying FIDELIS products for purchase by the CITY; (2) testing FIDELIS products for use by SFDPH; (3) recommending FIDELIS products and services to her supervisors at SFDPH; and (4) contacting MoreDirect to arrange for procurement of FIDELIS products and services.

34. HEATHER ZALATIMO knew or had reason to know that she had a financial interest in the purchase of FIDELIS products and services, because she knew that her spouse, MAAREK ZALATIMO, was employed at FIDELIS.

35. Accordingly, the CITY prays for judgment against Defendant HEATHER ZALATIMO as set forth below in the Prayer for Relief.

THIRD CAUSE OF ACTION

**For Violation of the San Francisco Campaign and Governmental Conduct Code
Sections 3.200 *et seq.* Brought by the CITY**

Against All Named DEFENDANTS and Does 1-10

36. Plaintiff CITY re-alleges and incorporates by reference each and every paragraph set

1 forth above.

2 37. San Francisco Campaign and Governmental Conduct Code Section 3.242 authorizes the
3 CITY ATTORNEY to act as civil prosecutor with respect to violations of any San Francisco conflict
4 of interest and/or governmental ethics law and to bring actions "on behalf of the people of San
5 Francisco." San Francisco Campaign and Governmental Conduct Code Section 3.242(b)-(c).

6 38. Section 3.206 of the Campaign and Governmental Conduct Code explicitly
7 incorporates both the Political Reform Act, Government Code Sections 87100 *et seq.*, and Sections
8 1090 *et seq.*

9 39. Because DEFENDANTS' conduct, as described in this Complaint, violated the
10 Political Reform Act and/or Government Code Section 1090, it also violated the San Francisco
11 Campaign and Governmental Conduct Code Section 3.206.

12 40. By engaging in the conduct described in this Complaint, Defendant HEATHER
13 ZALATIMO negligently or intentionally violated San Francisco conflict of interest and/or
14 governmental ethics laws.

15 41. By engaging in the conduct described in this Complaint, Defendants FIDELIS,
16 MAAREK ZALATIMO, and JORGENSEN also knowingly and intentionally assisted in, or aided and
17 abetted, HEATHER ZALATIMO's violations, in violation of Section 3.236 of the San Francisco
18 Campaign and Governmental Conduct Code.

19 42. Accordingly, the CITY prays for judgment against DEFENDANTS as set forth below
20 in the Prayer for Relief.

21 **FOURTH CAUSE OF ACTION**

22 **For Violations of Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.***
23 **Brought by the PEOPLE OF THE STATE OF CALIFORNIA**
24 **Against Defendants MAAREK ZALATIMO, FIDELIS, and Does 1-10**

25 43. Plaintiff PEOPLE re-alleges and incorporates by reference each and every paragraph
26 set forth above.

27 44. Plaintiff PEOPLE, acting to protect the public as consumers and competitors from
28 unlawful, unfair, and fraudulent practices, brings this cause of action in the public interest in the name
of the People of the State of California, pursuant to Business and Professions Code Sections 17200-

17209. Section 17200 of the Business and Professions Code provides that unfair competition shall mean and include any "unlawful, unfair, or fraudulent business act or practice."

45. By engaging in the conduct described in this Complaint, Defendants MAAREK ZALATIMO and FIDELIS engaged in unfair competition within the meaning of the Unfair Competition Law, Business and Professions Code Section 17200. Each of the acts alleged in this Complaint constitutes an unlawful, unfair, or fraudulent business act or practice under Section 17200. Defendants' MAAREK ZALATIMO and FIDELIS' acts caused damage to the CITY. The predicate unlawful business acts or practices include, without limitation, violations of California and San Francisco conflict of interest laws and/or governmental ethics laws. These wrongful acts include, but are not limited to:

- (a) MAAREK ZALATIMO's assistance to HEATHER ZALATIMO in the CITY's purchase of FIDELIS products and services for SFDPH, in violation of Government Code Section 1090 and San Francisco Campaign and Governmental Conduct Code Section 3.236;
- (b) FIDELIS' receipt of monies from the CITY that were obtained through violations of San Francisco Campaign and Governmental Conduct Code Section 3.236 and Government Code Section 1090; and
- (c) FIDELIS' aiding and abetting violations of San Francisco Campaign and Governmental Conduct Code Section 3.206 and Government Code Section 1090.

46. Plaintiff PEOPLE therefore prays for judgment against Defendants MAAREK ZALATIMO and FIDELIS as set forth below in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, the PLAINTIFFS pray for judgment against DEFENDANTS as follows:

- (1) For disgorgement by DEFENDANTS of all of the CITY's payments toward the \$1.245 million purchase of FIDELIS products and services, with pre and post-judgment interest.
- (2) For the costs of this action, including litigation costs, costs of investigation, and court costs;

1 (3) For declaratory and injunctive relief under Government Code Section 91003(b) setting
2 aside, as void from the beginning, the \$1.245 million purchase order for the purchase of FIDELIS
3 products and services;

4 (4) For civil penalties against HEATHER ZALATIMO under Government Code Section
5 91005(b) for an amount three times the value of the economic benefit that she realized as a result of
6 her violation of Government Code Sections 87100 *et seq.* according to proof at trial;

7 (5) For civil penalties against HEATHER ZALATIMO under Government Code Section
8 91005.5 for five thousand dollars (\$5,000) per violation of Government Code Section 87100 *et seq.*;

9 (6) For civil penalties against DEFENDANTS and each of them under San Francisco
10 Campaign and Governmental Conduct Code Section 3.242(b) for five thousand dollars (\$5,000) per
11 violation of City conflict of interest and/or governmental ethics laws;

12 (7) For civil penalties against Defendants MAAREK ZALATIMO and FIDELIS under
13 Business and Professions Code Section 17206, not to exceed two thousand, five hundred dollars
14 (\$2,500) for each violation of Section 17200. Under Business and Professions Code Section 17205,
15 these penalties shall be cumulative to any other penalties or other remedy;

16 (8) For an order under Business and Professions Code Section 17203 enjoining Defendants
17 from performing or proposing to perform any of the aforementioned acts of unfair competition within
18 the City and County of San Francisco; and

19 (9) For such other and further relief as the Court may deem proper.

20 **JURY DEMAND**

21 PLAINTIFFS demand a jury trial.

22 Dated: November 27, 2018

23 DENNIS J. HERRERA
24 City Attorney
25 KESLIE STEWART
Head Attorney for Public Integrity

26 By: 

27 KESLIE STEWART
Attorneys for Plaintiffs

28 CITY AND COUNTY OF SAN FRANCISCO and THE
PEOPLE OF THE STATE OF CALIFORNIA

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DENNIS J. HERRERA, City Attorney, State Bar #139669 KESLIE STEWART, State Bar #184090 1390 Market Street, Seventh Floor San Francisco, CA 94102-5408 TELEPHONE NO.: 415-554-3980 FAX NO.: 415-554-9711 ATTORNEY FOR (Name): Plaintiffs CCSF, et al.	FOR COURT USE ONLY <h1 style="margin: 0;">FILED</h1> San Francisco County Superior Court NOV 27 2018 CLERK OF THE COURT BY: <u><i>Chalene Tabris</i></u> Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
CASE NAME: CCSF, et al., v. FIDELIS CYBERSECURITY, INC., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CGC-18-571572 JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 4
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 27, 2018

Keslie Stewart

(TYPE OR PRINT NAME)

Keslie Stewart

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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